

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5165 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? No

2. To be referred to the Reporter or not?

No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

No

5. Whether it is to be circulated to the Civil Judge?

No

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PATEL DHANJIBHAI PRABHUDAS

Versus

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PATEL HARGOVANBHAI ISHWARBHAI

Appearance:

MR MEHUL SHARAD SHAH for Petitioners  
MR YV BRAHMBHATT for Respondent No. 1  
Mr.S.A. Pandya, APP, for Respondent No. 2

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CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 25/03/98

ORAL JUDGEMENT

The petitioners, against whom Criminal Case No.1779 of 1997 is filed by respondent No.1, in the Court of the learned Judicial Magistrate, First Class, Kalol, for the offences punishable under Sections 406, 420, read with Section 114 of the Indian Penal Code, have approached this Court by filing this application under Section 482 of the Code of Criminal Procedure ('Code' for short), challenging the order of issuance of process on August 13,1997 by the learned Judicial Magistrate, against the petitioners, and prayed to quash the said complaint.

As per the allegations made in the complaint, respondent No.1 is the Secretary of Sardar Dudh Utpadak Mandli, situated at Chhatral, Taluka Kalol. It is alleged in the complaint that original accused Nos. 1 and 2 are the Managing Directors of Sardar Dairy Limited, ('Dairy' for short) and accused No.3 is Accountant of the Dairy. The complainant supplied milk to the Dairy from February 11, 1997 to February 20, 1997 and he had to recover Rs.20766.00 for supply of milk. It is further alleged that, from February 21, 1997 to March 1, 1997, the complainant supplied milk of the value of Rs.12783.99 ps., which was also not paid by the Dairy. It is alleged that, thereafter, the complainant had served a registered notice to the Management of the Dairy calling upon it to pay the dues of the complainant. It is alleged that, in spite of issuance of the notice, no payment was made by the petitioner-accused and, therefore, they have committed offences punishable under Sections 406, 420 read with Section 114 of the Indian Penal Code. The said complaint came to be lodged in the Court of the learned Judicial Magistrate, First Class, Kalol, on August 12, 1997, and the learned Magistrate issued process against the petitioners, which order is challenged by the petitioners in this application.

Heard the learned advocates for the parties.

Reading the complaint, it appears, prima facie, that the it is for the recovery of the amount in

consideration of the milk supplied by the complainant to the Dairy, which, essentially, is a civil dispute, for which the complainant had taken the aid of the criminal proceeding to recover the dues payable to him. The complaint does not show any of the ingredients of Sections 406 and 420 of the Indian Penal Code.

Reliance is placed by the learned advocate for the petitioners in the case of Rajnikant Ambalal Patel vs. State of Gujarat & Another, reported in 1987 (2) G.L. H. 334, wherein, in the similar facts and circumstances, the learned single Judge has quashed the complaint, which was filed under Sections 406 and 420 of the Indian Penal Code. It is held in the case of Rajnikant Ambalal Patel (*supra*), that, to establish offence under Section 406, there must be an allegation about entrustment of property. Reading the complaint in the present case, it does not, *prima facie*, show that there was entrustment of property. Ingredients of Section 420 of the Indian Penal Code are also not established. The allegations made in the complaint do not show that the complainant was deceived and fraudulently or dishonestly was induced to deliver the property or to consent to retain the property or intentionally induced to do or omit to do anything which he would not do or omit to do if he were not so deceived, and such act or omission caused or likely to cause damage or harm to that person in body, mind, reputation or property. Looking to the allegations made in the complaint, none of the ingredients of Section 420 is established.

The learned advocate for respondent No.1 has vehemently argued that the petitioners should approach the learned Magistrate for discharge, before approaching this Court by filing the present application under Section 482 of the Code. In support of his argument, the learned advocate for respondent No.1 has relied upon the decision of this Court in the case of Kishanlal Shohanlal Taparia and others vs. Shankerbhai Revabhai Patel & another, reported in 1995 (1) GLR p.191. In my opinion, the judgment relied upon by the learned advocate for the respondent no.1 will not apply to the facts of the present case.

The Honourable Supreme Court, in the case of M/s. Pepsi Foods Limited and another vs. Special Judicial Magistrate and others, reported in JT 1997 (8) S.C. 705, has held that, if the complaint does not establish ingredients of offence, which is alleged against the original accused, the court should quash the complaint

and should not direct the accused persons to approach the learned Magistrate. It is further held that summoning of an accused in a criminal case is a serious matter; Criminal law cannot be set into motion as a matter of course; The Magistrate, while issuing process, should not be a silent spectator and should not issue process mechanically. In the present case, as stated above, the complaint does not show, *prima facie*, ingredients of Sections 406, 420 read with section 114 of the Indian Penal Code. Therefore, in my opinion, the complaint requires to be quashed. It must be stated that the complainant has also not averred in the complaint that the petitioners Nos. 1 to 3 were responsible for the business and management of the Dairy. There is not a whisper against them as to how they were responsible for commission of alleged offences, and what part they have taken in commission of the said offence.

As a result of foregoing reasons, this application succeeds. Criminal Case No.1779 of 1997 filed by respondent No.1, for the offences punishable under Sections 406, 420, read with Section 114 of the Indian Penal Code, and the order of issuance of process by the learned Judicial Magistrate, First Class, Kalol, on August 13, 1997, are quashed and set aside. Rule is made absolute.

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(swamy)